MONTANA ADMINISTRATIVE REGISTER

2023 ISSUE NO. 3
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PAGES 145-164

ISSUE NO. 3

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.8.202 pertaining to Time From Processing That Fluid Milk May Be Sold for Public Consumption	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.8.202 TIME FROM PROCESSING THAT FLUID MILK MAY BE SOLD FOR PUBLIC CONSUMPTION (1) When 12 days or more have passed following pasteurization of a unit of grade A milk, there will be no quantities of that unit of milk sold as packaged except as provided in (a).

(a) Half pint packages of Grade A milk may be further distributed within an institution after the 12 days has passed, provided the initial purchase occurred pursuant to (1) above. For the purposes of this subsection, an institution means a school, hospital, or similar entity.

(2) and (3) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

REASON: The department proposes to amend this rule to give schools and similar institutions needed flexibility to fulfill a requirement to provide milk as part of their meal programs. The distribution of milk in 8-oz (half pint) containers is primarily to schools and similar institutions which may create unique supply chain challenges for compliance with ARM 32.8.202(1).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-

1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., March 10, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the executive officer at the above address no later than 5:00 p.m., March 10, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 14 persons based on 44 licensed dairy producers, 7 licensed Grade A plants, and 90 licensed milk distributors and jobbers.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State January 31, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.3.2001 pertaining to Brands and Earmarks	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 6, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N. Roberts St., Room 304, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9525; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.3.2001 BRANDS AND EARMARKS (1) The following (1)(a) and (1)(b) are brands required for import of cattle into Montana:

(a) cattle originating from Mexico must be "M" branded as required by 9 CFR 93.427.

(b) cattle originating from Canada must have a CΛN hot iron brand or tattoo as permanent origin identification. ~~The brand~~ If a brand is used, it must be 2-3 inches tall applied high on the right hip, consistent with VS memo 591.64. If a tattoo is used, it must identify the exporting country with the CΛN letters applied to the inside of the left ear.

~~(2) The state veterinarian may waive identification requirements for import into Montana as follows:~~

~~(a) Animals for exhibition only;~~

~~(b) Animals imported to a Montana bull stud for quarantine on arrival that will return to Canada; or~~

~~(c) On a case-by-case basis with Board of Livestock approval, if the waiver does not create a threat of disease to livestock or to the public, or compromise animal disease traceability.~~

(3) remains the same but is renumbered (2).

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-103, MCA

REASON: The department proposes to amend this rule as requested by industry. This amendment will bring the department in line with USDA regulations which require Canadian origin cattle to be permanently identified with either a brand or tattoo and is supported by the Animal Health Bureau.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., March 10, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Officer at the above address no later than 5:00 p.m., March 10, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 based on 47 recorded imports of bovines from Canada last year.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State January 31, 2023.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the repeal of ARM 38.2.2401, 38.2.2403, 38.2.2404, 38.2.2405, and 38.2.2406 pertaining to interventions	)))))	NOTICE OF SECOND PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On December 9, 2022, the Department of Public Service Regulation's MAR Notice No. 38-2-258, which pertained to the public hearing on the proposed adoption and repeal of the above-stated rules, was published at page 2259 of the 2022 Montana Administrative Register, Issue Number 23.

2. The public hearing on the proposed adoption and repeal of the above-stated rules was held on January 10, 2023, and interested persons originally had through January 13, 2023, to submit written comments to the department's proposed rulemaking. The department received no comments to the proposed rulemaking.

3. On July 8, 2022, the department published MAR Notice No. 38-2-255, which proposed rulemaking to update the same intervention rules addressed in MAR Notice No. 38-2-258. The department received substantial public comment regarding MAR Notice No. 38-2-255. Based on that feedback, the department decided not to adopt the rulemaking proposed in in MAR Notice No. 38-2-255.

4. Given the lack of public comment on the rulemaking proposed in MAR Notice No. 38-2-258, the department is concerned there may have been confusion about the status of the department's current proposed rulemaking in MAR Notice No. 38-2-258. The department will therefore extend the comment period and hold a second public hearing to accept comments on the rulemaking proposed in MAR Notice No. 38-2-258.

5. On March 7, 2023, at 1:00 p.m., the Department of Public Service Regulation will hold a second public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the adoption and repeal of the above-stated rules, as proposed in MAR Notice No. 38-2-258. The hearing will be livestreamed at https://psc.mt.gov/livestream. Comments may be provided by telephone or videoconference. Commenters seeking to participate by telephone or videoconference must contact the department at (406) 444-6199, by 5:00 p.m. on March 6, 2023, to receive the necessary call-in information for the hearing.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6199; fax (406)

444-7618; or e-mail pschelp@mt.gov, and must be received no later than 5:00 p.m. on March 10, 2023.

7. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on March 1, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P. O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

8. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

/s/ LAURA D. VACHOWSKI
Laura D. Vachowski
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State January 31, 2023.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.5.1010 pertaining to construction of utility lines and facilities	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Service Regulation proposes to amend the above-stated rule.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on March 3, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

38.5.1010 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL SAFETY CODE (1) Pursuant to 69-4-201, MCA, the commission is empowered to implement and enforce construction standards for utility lines and facilities and for that purpose the commission ~~hereby~~ adopts and incorporates by reference the ~~2017~~ 2023 edition of the National Electrical Safety Code (NESC). A copy of the NESC may be obtained from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-4-201, MCA
IMP: 69-4-201, MCA

REASON: The Commission's rules regarding incorporation by reference of the National Electrical Safety Code have not been revised since 2017. Consistent with its obligations under 69-4-201(2), MCA, the Commission standards must be based on standards published in the most recent edition of the national electrical safety code. Because there is a new 2023 edition of the national electrical safety code, the Commission is updating its rules to reflect that edition.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov, and must be received no later than 5:00 p.m., March 10, 2023.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may do so by submitting a written request to the department. The request must include the name, e-mail address, and mailing address of the person to receive notices. The request must specify which of the following matters the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers, rail carriers; and/or administrative procedures. The written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P. O. Box 202601, Helena, MT 59620-2601 or emailed to pschelp@mt.gov. Persons may also have their name added to the list of interested persons by completing a request for at any rules hearing held by the department.

7. With regard to the requirements 2-4-11, MCA, the department has determined that the amendment of the above-reference rule will not significantly and directly impact small businesses.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. A commissioner or a duly appointed presiding officer shall preside over and conduct the hearing.

/s/ DANIEL POLKOW
Daniel Polkow
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State January 31, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Workforce Innovation and Opportunity Act Montana State Plan Youth ITA Waiver Request	))))	NOTICE OF PUBLIC COMMENT

TO: All Concerned Persons

1. Until March 10, 2023, the Department of Labor and Industry (department) will accept public comments regarding the Workforce Innovation and Opportunity Act Montana State Plan Youth Individual Training Accounts Waiver Request (Youth ITA Waiver Request). The Youth ITA Waiver Request will allow in-school youth ages 16-21 to use ITAs. Currently only out-of-school youth ages 16-21 can use ITAs.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public comment process or need an alternative accessible format of this notice. If you require an accommodation, contact the department to advise us of the nature of the accommodation that you need. Please contact Wes Feist, P.O. Box 1728, Helena, Montana 59604; telephone (406) 444-4480; Montana Relay 711; or e-mail wesley.feist@mt.gov.

3. The Youth ITA Waiver Request is available for review at swib.mt.gov/program-information/public-comment. Printed versions are available upon request.

4. After public comments are received, the department will consider and incorporate the comments into the final Youth ITA Waiver Request.

5. Concerned persons may submit their data, views, or arguments in writing to Wes Feist, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59604, or by e-mail to: wesley.feist@mt.gov, and must be received no later than March 10, 2023, at 5:00 p.m.

/s/ Laurie Esau
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on January 31, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the Workforce Innovation and Opportunity Act Montana State Plan OSY Waiver Request	))))	NOTICE OF PUBLIC COMMENT

TO: All Concerned Persons

1. Until March 10, 2023, the Department of Labor and Industry (department) will accept public comments regarding the Workforce Innovation and Opportunity Act Montana State Plan Out-of-School Youth Waiver Request (OSY Waiver Request). The OSY Waiver Request will allow youth workforce serviced providers to use 25% more funds for programs targeting in-school youth.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public comment process or need an alternative accessible format of this notice. If you require an accommodation, contact the department to advise us of the nature of the accommodation that you need. Please contact Wes Feist, P.O. Box 1728, Helena, Montana 59604; telephone (406) 444-4480; Montana Relay 711; or e-mail wesley.feist@mt.gov.

3. The OSY Waiver Request is available for review at swib.mt.gov/program-information/public-comment. Printed versions are available upon request.

4. After public comments are received, the department will consider and incorporate the comments into the final OSY Waiver Request.

5. Concerned persons may submit their data, views, or arguments in writing to Wes Feist, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59604, or by e-mail to: wesley.feist@mt.gov, and must be received no later than March 10, 2023, at 5:00 p.m.

/s/ Laurie Esau
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on January 31, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1.	Consult ARM Topical Index. Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.
Statute	2.	Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2022. This table includes notices in which those rules adopted during the period August 26, 2022, through January 27, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 or 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620